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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>13975-00002-US</b>	
	Application Number <b>10/527,659-Conf. #7080</b>	Filed <b>April 8, 2005</b>	
	First Named Inventor <b>Dirk Heukelbach et al.</b>		
	Art Unit <b>1711</b>	Examiner <b>N. M. Nutter</b>	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).          Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest.          See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.          Registration number <u>55,841</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.          Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p>_____ /Eamonn P. Morrison/ Signature</p> <p>_____ Eamonn P. Morrison Typed or printed name</p> <p>_____ (302) 658-9141 Telephone number</p> <p>_____ August 13, 2008 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			

Docket No.: 13975-00002-US  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Dirk Heukelbach et al.

Application No.: 10/527,659

Confirmation No.: 7080

Filed: April 8, 2005

Art Unit: 1711

For: METHOD FOR THE PRODUCTION OF A  
PACKAGING MADE OF  
THERMOFORMABLE FILM HAVING HIGH  
THERMAL STABILITY AND A VAPOUR  
BARRIER

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Examiner: N. M. Nutter

**REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

In response to the Final Office Action dated March 13, 2008, rejecting claims 1-18, Applicants submit the following remarks in support of the Pre-Appeal Brief Request for Review filed concurrently herewith:

**Remarks begin on page 2 of this paper.**

### REMARKS

Reconsideration of the application is respectfully requested in view of the following remarks.

#### **Rejection Under 35 U.S.C. § 103(a)**

Claims 1-18 stand rejected as obvious over U.S. Patent No. 6,365,686 to Jacobs et al. (hereinafter, D1) in view of either U.S. Patent No. 5,783,273 to Yamamoto et al. (hereinafter, D3) or U.S. Patent No. 5,532,030 to Hirose et al. (hereinafter, D4). Claims 1-18 also stand rejected as obvious over U.S. Patent No. 6,316,560 to Jacobs et al. (hereinafter, D2) in view of either D3 or D4. Applicants respectfully traverse.

#### **Rejection of Claims 1-18 over D1 in view of D3 or D4**

Claim 1 of the present application recites:

“[A] process for producing a packaging composed of a thermoformable film composed of thermoplastic polyolefins, *via thermoforming*, where, after thermoforming, the film has an improved heat distortion temperature and a high water-vapor barrier, which comprises using, in the thermoformable film, an amount in the range *of from 20 to 90 %* by weight, based on the total weight of polyolefins, of COC *with a glass transition temperature Tg in the range from 65 to 200°C*, measured to DIN EN ISO 11357-1 with the aid of a DSC at a heating rate of 10 K/min, and which comprises producing therefrom, *via thermoforming* at a temperature in the range from 70 to 170°C *a packaging whose heat distortion temperature is in the range from 60 to 200°C.*”

(emphasis added)

D1 does not specifically disclose films comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight and which possess the specifically claimed features. Furthermore, since D1 does not disclose COC/thermoplastic polyolefin blends in the claimed proportions, it cannot be assumed that films prepared from such polymer blends would inherently possess the claimed Tg range of from 65 to 200°C and heat distortion temperature range of from 60 to 200°C.<sup>1</sup> Furthermore, no part of the disclosure of D1 teaches a process for producing a packaging, or any other article, via thermoforming. The only methods of manufacture mentioned in D1 are extrusion and injection molding. Column 25, lines 43-50 of D1.

Likewise, both D3 and D4 fail to disclose or suggest these missing features. Regarding the claimed heat distortion temperature range, the Examiner essentially asserts that this feature is inherent in the packagings of D3 and D4, inasmuch as the glass transition temperature ranges disclosed in these references are “indicative of a high heat distortion resistance.” Page 5, lines 9-11 and page 8, lines 1-3 of the March 13, 2007 Office Action. Applicants point out that the Tg disclosed in these references are not for films comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, as claimed. Furthermore, to establish that a missing claim limitation is inherent, rationale or evidence making “clear that the missing descriptive matter is *necessarily present* in the thing described in the reference” must be provided. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Inherency may not be established by probabilities or possibilities and the mere fact that a certain thing *may result* from a given set of circumstances is not sufficient. *Id.* The Examiner has failed to establish that the packagings of D3 and D4 inherently possess a heat distortion temperature in the range from 60 to 200°C since it has not been shown that the glass transition temperature ranges disclosed in these references *necessarily* result in packagings possessing the presently claimed heat distortion temperature range.

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<sup>1</sup> In his obviousness rejection at page 4, lines 10-13 of the March 13, 2007 Office Action, the Examiner acknowledges that D1 does not explicitly or inherently disclose this feature. There, the Examiner states that D1 does “not provide any teaching of ranges for the heat distortion temperatures as recited in claims 10, 12 and 18.”

To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)). D1 in combination with D3 or D4 fails to either disclose or suggest packaging prepared from films (1) comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, (2) having a heat distortion temperature range of from 60 to 200 °C, and (3) produced via thermoforming. As such, the combined teachings of these references fail to render claim 1 obvious. Furthermore, claims 2-18 are also deemed non-obvious and patentable over the combined teachings of these references, since they all depend directly or indirectly from claim 1.

Applicants respectfully request withdrawal of this rejection.

#### **Rejection of Claims 1-18 over D2 in view of D3 or D4**

Applicants incorporate herein by reference in their entirety the remarks *supra* regarding the rejection of claims 1-18 over D1 in view of D3 or D4.

Like D1, D2 does not specifically disclose films comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight and which possess the specifically claimed features. It also does not disclose COC/thermoplastic polyolefin blends in the claimed proportions and, thus, it cannot be assumed that films prepared from such polymer blends would inherently possess the claimed Tg range of from 65 to 200°C and heat distortion temperature range of from 60 to 200°C.<sup>2</sup> Furthermore, no part of the disclosure of D2 teaches a process for producing a packaging, or any other article, via thermoforming. The only methods of manufacture mentioned in D2 are extrusion and injection molding. Column 13, lines 37-45 of D2. Likewise, both D3 and D4 fail to disclose or suggest these missing features for the reasons given *supra*.

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<sup>2</sup> In his obviousness rejection at page 7, lines 4-7 of the March 13, 2007 Office Action, the Examiner acknowledges that D2 does not explicitly or inherently disclose this feature. There, the Examiner states that D2 does “not provide any teaching of ranges for the heat distortion temperatures as recited in claims 10, 12 and 18.”

D2 in combination with D3 or D4 fails to disclose or suggest prepared from films (1) comprising blends of COCs with additional polymers where the COCs are present in the blend in an amount in the range of from 20 to 90 % by weight, (2) having a heat distortion temperature range of from 60 to 200 °C, and (3) produced via thermoforming. As such, the combined teachings of these references fail to render claims 1-18 obvious. Furthermore, claims 2-18 are also deemed non-obvious and patentable over the combined teachings of these references, since they all depend directly or indirectly from claim 1.

Applicants respectfully request withdrawal of this rejection.

In view of the foregoing remarks, Applicants believe the pending application is in condition for allowance.

The Director is authorized to charge \$970.00 to cover the fees under 37 C.F.R. §§ 1.17(a)(2) and 41.20(b)(1). Should any other fees be required in connection with this Amendment, authorization is hereby made to charge any fees due or outstanding, including any extension fees, or credit any overpayment, to Deposit Account No. 03-2775, under Order No. 13975-00002-US, from which the undersigned is authorized to draw.

Dated: August 13, 2008

Respectfully submitted,

Electronic signature: /Eamonn P. Morrison/  
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